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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the matter of )

Implementing a Nationwide, Broadband )  
Interoperable Public Safety Network in )  
the 700 MHz Band )

PS Docket No. 06-229 ✓

Development of Operational, Technical and )  
Spectrum Requirements for Meeting Federal, State )  
And Local Public Safety Communications )  
Requirements Through the Year 2010 )

WT Docket No. 96-86

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**COMMENTS OF THE COUNTIES OF FOXCOMM; WISCONSIN COUNTIES OF  
BROWN, OUTAGAMIE, CALUMET AND WINNEBAGO**

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April 5, 2007

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**COMMENTS OF THE FOXCOMM COUNTIES**

The Counties of FoxComm, (Wisconsin Counties of Brown, Calumet, Outagamie and Winnebago), hereby submit these comments in response to the Ninth Notice of Proposed Rulemaking in the above-captioned proceeding. In this phase of this proceeding, the Commission is seeking comment on whether the 12 MHz of spectrum at 767-773 MHz and 797-803 MHz, currently designated as wideband segments, be allocated for broadband use and that a single, national public safety broadband licensee be assigned this spectrum on a primary basis. Under the proposal, the licensee also would be authorized to use all other public safety spectrum in the 700 MHz band on a secondary basis.

FoxComm represents agency and county officials within the Wisconsin Counties of Brown, Calumet, Outagamie and Winnebago, and our brief comments are designed to support additional spectrum for public safety in the 700 MHz band for broadband applications. This is necessary for the use of emerging technologies by public safety, to improve efficiencies and further protect our first responders.

We are concerned however, that the 9<sup>th</sup> NPRM could create serious problems for the digital television transition slated for February 2009. The spectrum released by the Deficit Reduction

Act (DRA) is just now being utilized by public safety as the voice and data industry ramps up their development and manufacture of new equipment to use the cleared spectrum for interoperability and new applications. Many local governments look forward to utilizing the new spectrum, but some are years away from implementing voice and data solutions based on the new 700 MHz spectrum due to governance, planning and acquisition issues. FoxComm is concerned that this new approach outlined in the 9<sup>th</sup> NPRM may cause some to call into question the utilization of existing 700 MHz spectrum before supporting the use of the band for broadband applications.

The lessons learned from the legislative battle over 700 MHz was illustrative of giving a single entity control over so much spectrum for one stated purpose, while allowing it to be used by the commercial sector for another. The broadcasting industry was able to “borrow” digital spectrum from public safety to facilitate the transition from analog to digital television. While well intentioned, and effective in allowing the transition, it required a hard fought legislative campaign to wrest control of that “public safety” spectrum back from the broadcasting industry. FoxComm is concerned that giving any single entity authority control of this spectrum and allowing it to be “leased” to commercial interests is a mirror image of the DTV transition and could be quite problematic.

While FoxComm does not claim to be a legal authority, we are concerned that the 9<sup>th</sup> NPRM may violate Section 337(f) of the Communications Act if the licensed entity proposed by the FCC is anything other than a consortium of state and local governments, or an authorized non-governmental entity whose primary mission is the provision of public safety services. Licensing a different form of entity may call into question the FCC’s legal authority in this matter.

FoxComm is concerned that the 9<sup>th</sup> NPRM predicates its plan on technologies that are in their infancy or nonexistent. We believe that promising technologies should be encouraged, but that utilizing public safety spectrum to prove what is unproven is a reckless approach for use of such a valuable resource.

FoxComm also believes that the licensing of **an** entity that has no responsibility to seek out and actively respond to the public safety community and local officials may not meet the needs of the communities. These needs are identified in the grant guidance of the Department of Homeland Security for the acquisition of new equipment and the actual first responder applications. Being a "user on a fee for service basis" is hardly the way local governments should have input on the utilization of this critical resource in their communities. We also believe that it would be difficult to assure that public safety agencies of all sizes and locations would gain benefit of a broadband system deployed by a profit driven organization without a deployment commitment that would cover all urban and rural areas.

FoxComm requests that the Commission reconsider this proposal, "fine tune" it to reflect the constitutional realities of federalism, and move very cautiously before allowing a single non-governmental entity to gain a sole-source license for such an important public safety resource. Again, we want to make clear that we support additional spectrum in the 700 MHz band for broadband applications, it the way that spectrum is made available and to whom that we draw pause.

Respectfully submitted,

On behalf of the Counties of FoxComm

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